

FILEDUNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

DEC 27 2013

**MATTHEW J. DYKMAN
CLERK**

John Heard 64679
 Full Name/Prisoner Number
 Otero County Prison Facility
 10 McGregor Range Road
 Chaparral New Mexico 88081

Complete Mailing Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Civil Action No. 13-1236 KG/WPL
 (To be supplied by the Court)

John Heard 64679

, Plaintiff(s),

Full name(s) and prisoner number(s)

(Do not use *et al.*) Warden Bravo, Associate Warden R. Uliabrrri, all counts
 C. Chavez, counts 2-9. Ms Bkatka, count 1.
 V. Lt. Vigil counts 1-6. Lt. Rivera counts 7-9.
 All in there individual and official capacity.

, Defendant(s).

(Do not use *et al.*)

PRISONER'S CIVIL RIGHTS COMPLAINT

A. PARTIES AND JURISDICTION

1. John Heard is a citizen of New Mexico who
 (Plaintiff) (State)

presently resides at OTCPF 10 McGregor Range Road Chaparral N.M. 88081
 (mailing address or place of confinement)

2. Defendant Warden Bravo is a citizen of New Mexico
 (name of first defendant) (State)

whose address is P.O. Box 520 Santa Rosa New Mexico 88435,

and who is employed as Warden GEO-GCCF. At the time the claim(s)
 (title and place of employment)

alleged in this complaint arose, was this defendant acting under color of state law?

Yes No. If your answer is "Yes," briefly explain:

Was acting in official capacity and was on duty at the time

3. Defendant Associate Warden R. Uliabarri is a citizen of New Mexico
(name of second defendant) (State)

whose address is P.O. Box 520 Santa Rosa New Mexico 88435

and who is employed as Assoicate Warden GEO-GCCF. At the time the claim(s)
(title and place of employment)

alleged in this complaint arose, was this defendant acting under color of state law?

Yes No. If your answer is "Yes," briefly explain:

Was acting in official capacity and was on duty

(If more space is needed to furnish the above information for additional defendants, continue on a blank sheet which you should label "A. PARTIES." Be sure to include each defendant's complete address and title.)

(CHECK ONE OR BOTH:)

Jurisdiction is asserted pursuant to 42 U.S.C. § 1983 (for state defendants) or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) and 28 U.S.C. § 1331 (for federal defendants).

Jurisdiction also is invoked pursuant to 28 U.S.C. § 1343(a)(3). (If you wish to assert jurisdiction under different or additional statutes, you may list them below.)

B. NATURE OF THE CASE

BRIEFLY state the background of your case.

1. Unconstitutional mail practices, or unconstitutional as
applied

2. No Due Process

3. Practices so vague they fail to provide any guidance to the
decision makers.

4. Fails to uniformly follow policy, inconsistent with other
prison policies.

Continued on separate page

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A. PARTIES

4. Defendant C. Chavez is a citizen of New Mexico
whose address is, P.O. Box 520, Santa Rosa New Mexico 88435
and who is employed as, Mail Room Staff At the time the
claims alleged in this complaint arose.

Was this defendant acting under color of State Law?

Yes If your answer is "Yes" briefly explain:
Was on duty and employed by GEO-GCCF.

5. Defendant Lt, Vigil is a citizen of New Mexico
whose address is, P.O. Box 520, Santa Rosa New Mexico 88435
and who is employed as, Grievance officer At the time the
claims alleged in this complaint arose.

Was the defendant acting under color of state law?

YES If your answe is "Yes" Briefly explain:
Was on duty and employed by GEO-GCCF.

6. Defendant Lt, Rivera is a citizen of New Mexico
whose address is, P.O. Box 520, Santa Rosa New Mexico 88435
and who is employed as, Grievance officer At the time the
claims alleged in this complaint arose.

Was the defendant acting under color of state law?

YES If your answer is "Yes" Briefly explain:
Was on duty and employed by GEO-GCCF.

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A. PARTIES CONTINUED

7. Defendant: Ms Bkatka is a citizen of New Mexico
whose address is, P.O. Box 520, Santa Rosa New Mexico 88435
and who is employed as, Property Manager At the time the
claims alleged in this complaint arose.

Was this defendant acting under Color of State Law?

YES If your answer is "Yes" briefly explain:

Was on duty and employed by GEO-GCCF

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B. NATURE OF THE CASE CONTINUED

5. Implemented in such a way that prison censors can apply their own personal prejudices and opinions.
6. Practices are not legitimate and neutral.
7. A broad array of predetermined unacceptable publications
 1. Maintains an approved vendor list for books.
 2. Maintains a denied list of magazines.
8. Enforces unwritten "rules" ("Three Strikes").

C. CAUSE OF ACTION

I allege that the following of my constitutional rights, privileges, or immunities have been violated and that the following facts form the basis of my allegations: (If more space is needed to explain any allegation or to list additional supporting facts, continue on a blank sheet which you should label "C. CAUSE OF ACTION.")

Claim I: Denied book directly from the publisher,
the only place it was available.

Supporting Facts: (Include all facts you consider important, including names of persons involved, places, and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

I ordered a book directly from the publisher,
no where in policy does it say it has to be an "app
"approved vendor" Just "must come from
Publisher/Vendor."

Claim II: No Due Process

Supporting Facts:

I did not recieve a rejectionslip and it was returned
I did not have an opportunity to challenge the decision, C Chavez
quotes "three strikes" rule that does not exsist in written policy

Claim III: No Due Process

Supporting Facts:

I did not receive a rejection slip, and it was returned.
I did not have the opportunity to challenge the decision.

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment? Yes No. If your answer is "Yes," describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits using this same format on a blank sheet which you should label "D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF.")

a. Parties to previous lawsuit: NONE

Plaintiff(s): _____

Defendant(s): _____

b. Name and location of court and docket number _____

c. Disposition of lawsuit. (For example, was the case dismissed? Was it appealed? Is it still pending?)

d. Issues raised: _____

e. Approximate date of filing lawsuit: _____

f. Approximate date of disposition: _____

2. I previously have sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part D. Yes No.

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C. Cause of Action Continued.

Claim 4; No Due Process

Supporting Facts;

I did not receive a rejection slip and mail was returned to sender. I did not have the opportunity to challenge the decision. C. Chavez says she don't have to provide rejection slips. Gives a reason that a company I have never heard of, or contacted in any way, has already received "Three Strikes" and that "One company messed it up for all".

Claim 5; Censorship

Supporting Facts;

I was allowed to have this publication for the last six years, this year it is "inappropriate"? This is a personal opinion or prejudice. A letter from C. Chavez states, "It will not be going to the back". This is before the grievance was even settled!

Claim 6; Censorship, Discrimination.

Supporting Facts;

I ordered a book that was denied. Six months earlier another inmate ordered and received the exact same book. He still has it in his possession today.

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C. Cause of Action Continued.

Claim 7; No Due Process

Supporting Facts;

A magazine was sent back with no rejection slip. No way to challenge the decision. I did not even know it was here until it was returned. Another inmate has the exact same magazine, issue. Why was I not allowed to receive it? And why was I not notified of its return?

Claim 8; No Due Process

Supporting Facts;

A publication was sent back with no notice or rejection slip sent to me.

Claim 9; Not an official rejection slip.

Supporting Facts;

Rejections now being used are not on a official rejection form as stated in New Mexico Corrections Department policy. Form should be 151201.1. This form was changed to include a space for "inappropriate". The original form does not include this. (Note where I am now they are using the proper form 1515201.1).

If your answer is "Yes," briefly describe how relief was sought and the results.

3. I have exhausted available administrative remedies. Yes No. If your answer is "Yes," briefly explain the steps taken. Attach proof of exhaustion. If your answer is "No," briefly explain why administrative remedies were not exhausted.

Yes for counts 1-6, No for counts 7-9. I was transferred to another facility and have wrote the grievance officer to forward the pending grievances to me, as of 11/7/13 I have not received an answer. I am still attempting to exhaust, So far no answer and all efforts have failed.

E. PREVIOUSLY DISMISSED ACTIONS OR APPEALS

1. If you are proceeding under 28 U.S.C. § 1915, please list each civil action or appeal you have brought in a court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Please describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on a blank sheet which you should label "E. PREVIOUSLY DISMISSED ACTIONS OR APPEALS."

a. Parties to previous lawsuit: **NONE**

Plaintiff(s): _____

Defendant(s): _____

b. Name and location of court and docket number _____

c. Grounds for dismissal: () frivolous () malicious () failure to state a claim upon which relief may be granted.

d. Approximate date of filing lawsuit: _____

e. Approximate date of disposition: _____

2. Are you in imminent danger of serious physical injury? Yes No. If your answer is "Yes," please describe the facts in detail below without citing legal authority or argument.

F. REQUEST FOR RELIEF

I request the following relief: A temporary and permanent injunction to;

1. Stop censoring NON NUDE books and magazines.
2. Stop enforcing the unwritten "3 strikes rule".
3. Stop the approved vendor list for books.
4. Stop the denied list for magazines and go by a case by case. Give a rejection slip for all rejected mail with a clear and complete reason for the rejection. Let the sender know how to appeal the decision.

Punitive damages in the amount as seen fit from the court.
Compensatory damages, and reimbursement of all fees.
Train all mail room staff yearly to uniformly follow policy.

Prisoner's Original Signature

John Leonard
64679

Original signature of attorney (if any)

John Leonard
Chaparral NM.
88081

Attorney's full address and telephone

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at MTC of Socorro County Prison on 12-15-13
Chaparral NM 88081
(location) (date)

John Leonard
Prisoner's Original Signature

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COUNTS 7-9 EXHAUSTION

I am asking the court to proceed with counts 7-9.

I have wrote Lieutenant Rivera three times asking her to forward the pending grievances to me.

The third letter was sent certified. (receipt included).

As of 11/17/13 I have not got a response. (Copy's of all letters wrote included.) I have done all I can do to exhaust the grievance procedure, Failure to Comply on there behalf.

On 11-8-13 I received 1 informal complaint on another matter.

I have not received anything on counts 7, 8, 9. 90 days for exhaustion of grievance procedure has expired.

